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Supreme Court of the United States.

OCTOBER TERM, 1906.

No. 262.

THE CHAPMAN & DEWEY LAND COMPANY,
PLAINTIFF IN ERROR,

vs.

CHARLES H. BIGELOW, N. P. BIGELOW, L. P. WALKER AND F. H. HARTSHORN.
DEFENDANTS IN ERROR.

BRIEF FOR DEFENDANTS IN ERROR.

N. W. NORTON,
Counsel for Defendants in Error.

Printed at The Times Office, Forrest City, Ark

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BRIEF.

The lands involved in this litigation lie in Township 12 north, Range 6 east, in the northeastern part of the State of Arkansas. The claim is that they are accretions to the adjacent surveyed lands; or, that the riparian rights of the owner of the adjacent surveyed land (plaintiff in error) are broad enough to include the lands involved, whether made by accretion or not.

It is held by this Court, in Hardin vs. Jordan,

140 U. S., 371, that where a patent is issued for land bounded by a lake or stream, the title to the land under the water passes from the Government.

Two patents appear in the record in this cause. They are each in favor of the State of Arkansas—one for Township 12 north, Range 6 east; the other for Township 12 north, Range 7 east. Under the rule laid down in Hardin vs. Jordan, the title to the land under the water in these townships passed incidentally, upon the issuance of these patents, to the State of Arkansas.

Both parties to this litigation claim under the State of Arkansas—the patentee—and it follows that the existence of a Federal question is impossible.

Mace vs Merrill, 119 U. S., 581, 7 Sup. Ct. Rep., 330.

Hastings vs. Jackson, 112 U. S., 233, 5 Sup. Ct. Rep. 113.

"In our judgment, the grants of the Government for lands bounded on streams and other waters, without any reservation or restriction of terms, are to be construed, as to their effect, according to the law of the State in which the lands lie."

Text, in Hardin vs. Jordan, supra.

In Mitchell vs. Smale, 140 U. S., 406, we find pertinent expressions, as follows:

"Cases have happened, in which, by mistake, the meander line described by a surveyor in the field notes of his survey, did not approach the water line intended to be portrayed. Such mistakes, of course, do not bind the Government. Nor do we mean to say, that in granting lands bordering on a non-navigable lake or stream, the authorities might not formerly, by express words, have limited the granted premises to the water's edge, and reserved the right to survey and grant out the lake or river bottom to other parties. *But since the grant to the respective States of all swamp and overflowed lands therein, this cannot be done.*"

In Kean vs. Calumet Canal Co., 190 U. S.. 480, the title to the submerged portion of a fractional section, patented "as a whole," was held to pass *by the patent.*

An application of the principle to the case at bar, gives to the State of Arkansas, through the patents, the submerged portions of these townships. They were each conveyed "as a whole," as in Kean vs. Calumet Canal Co. the section was conveyed.

The submerged portions *fall within the limits of the patents.*

Where the boundaries of the patent do not in terms cover the adjacent submerged lands, they nevertheless belong to the State as incidental to its sovereignty. Iowa vs. Rood, 187 U. S., 87.

Where the submerged portions are covered by the descriptions in the patent, they pass by virtue of the patent--according to the case next to the last cited.

In this case the distinction is without importance.

It is sufficient for the present purpose that the title to the bed of the meandered water passed to the State of Arkansas.

WAS THE LAND AT THE TIME OF THE SURVEY PERMANENTLY SUBMERGED, OR ONLY TEMPORARILY UNDER WATER.

While in many cases this question has been one of prime importance, it is not necessarily so here. It is a question of fact.

Furthermore, no matter how the question of fact is decided, still the State of Arkansas acquired the title. If submerged land at the time, the manner of acquisition has been shown; if not submerged, it passed under the patent for the "whole of fractional Township" 12 north, Range 6 east. (Printed record, 35.)

When a patent is granted for a township of

land, it is elementary that all land within the township becomes the property of the grantee, regardless of acreage, and regardless of the extent to which it may have been subdivided into sections.

Quantity gives way to metes and bounds.

Ayers vs. Watson, 113 U. S., 594.

The surveyors meandered Old River. They—judging from the field notes—made no pretense of knowing what was in the interior of the meandered portion. From the proof of large timber now abounding, much of that interior was land, but swamp land, to which the State of Arkansas was entitled under the Act of September 28, 1850. Consequently no injustice was done the Government by the issuance of the patent for the whole township, even though it contained as a fact, a much greater quantity of land above water than the surveyors laid off in sections and computed.

As the patents issued for the townships, there is no need to refer to the passing of title *in praesenti* under the Act of September 28, 1850.

OF THE PLAINTIFFS' CLAIM.

It owns the fractional sections and parts of sections surrounding the unsurveyed portions. These fractional parts it holds under the State of Arkan-

sas, and contends, that by reason of this holding it is entitled to the large body of land meandered out:

1. On the ground that the meandered lands were built up by imperceptible additions to its lands. (Printed record, 27.)

2. By riparian rights. (Printed record, 30.)

A claim of accretions presents no Federal question. It is a common law right, when the fact is established. The right to accretions is included in "riparian rights." It follows that the question of riparian rights is the single question involved.

Riparian rights are matters of local law.

Hardin vs. Jordan, 140 U. S., 371.
Shively vs. Bowlby, 152 U. S., 45.
Lowndes vs. Huntington, 153 U. S., 19.
Hardin vs. Shedd, 190 U. S., 518.
Mobile Trans. Co. vs. Mobile, 187 U.S., 485.

Plaintiff in error is not the patentee of the Government—the State of Arkansas is, and it acquired the title to the entire township.

Plaintiff in error is the grantee of the State of Arkansas, (not immediately,) as to the fractional parts of sections abutting on the meander line, and the State in its determination of the rights passing to its grantee, will not be controlled by this Court. It does not follow, because the State by the patent

for the township acquired the township, that the plaintiff in error, by buying up the surveyed fractional sections, became the owner of the township.

The contention can hardly be said to possess plausibility; but if it did, to the point of probable merit, still the question would clearly be one of local law.

A decision of a State Court adverse to a claim of title to a lake bed, presents no Federal question which will sustain a writ of error from the Supreme Court of the United States.

Iowa vs. Rood, 187 U. S., 87, 23 Sup. Ct. Rep., 49.

That the Chief Justice of the State allowed the writ, does not help out, (Hulbert vs. City of Chicago, 202 U. S., 275, 26 Sup. Ct. Rep., 67,) nor can the assignments of error or petition for the writ be looked to for a determination of the existence of a Federal question.

Montana vs. Rice, — U. S., —, 27 Sup. Ct. Rep., 281.

Findings of fact by the trial court affirmed by the Supreme Court of the State, are conclusive on this court.

Minneapolis & St. L. R. Co. vs. Minnesota, 193 U. S. 53, 24 Sup. Ct. Rep. 396.

THE MEANDER LINES WERE RUN AS BOUNDARIES.

Whether they were or not, might be a proper subject of inquiry, if on the surveyed side, one party claimed under the Government by one right, and on the unsurveyed side, the other party claimed under the Government by another right, as in French-Glenn Live Stock Co. vs. Springer, 185 U. S. 47, 22 Sup. Ct. Rep. 563, and Wright vs. Roseberry, 121 U. S. 488, 7 Sup. Ct. Rep. 985. In those cases conflicting rights under the Government being set up, it was held that this Court had jurisdiction. In the case at bar, by the patent to the State for the township as a whole, everything in the township regardless of the location of the line, passed, whether run as a boundary or not.

And if in this case the rights of the parties were subject to adjudication in this Court, the first query would be the extent of the rights of the plaintiff in error by reason of its ownership of the fractional parts of sections abutting on the meander line.

This would have to be ruled by the laws of the State of Arkansas.

The rules of no other sovereign can be invoked.

But the decisions of this Court lead to the same result.

The lines were run as boundaries, under the rule in Smith vs. Horne, 159 U. S., 40, and Niles vs. Cedar Point Club, 175 U. S., 300.

Furthermore, the bill alleges (Print. Rec. 24 & 25) and the answer admits (Print. Rec. 78) that the lines were run as boundaries.

These meander lines, being boundaries, could well be adjudged the limit of the rights of plaintiff in error, either in the Courts of the United States or the Courts of the State of Arkansas.

And being boundaries, the rule laid down in Kean vs. Calumet Canal Co., *supra*, could not be invoked by plaintiff in error as to submerged portions of its tracts—a claim it has not made, however.

Likewise, in the Courts of either sovereign the question of accretions would be decided against plaintiff in error.

The proof shows that at many points, to say the least, there was high land in the unsurveyed territory; and, as in People vs. Warner, 74 N. W., 705, if any land has been newly made by accretion or reliction, it has attached to these high bodies rather than to the fractional sections of plaintiff in error, from which they were separated by Old River and Cut Off Lake.

Plaintiff in error can recover only on the strength of its own title.

Hardin vs. Jordan, 140 U. S., 371.

Lawrence vs. Zimpleman, 37 Ark., 644.

Kelly vs. Laconia Levee Dist. 74 Ark. 202

OF THE LETTER FROM THE SECRATARY OF THE INTERIOR TO THE COMMISSIONER OF THE GENERAL LAND OFFICE.

A letter written by the Secretary of the Interior to the Commissioner of the General Land Office, November 17, 1902, is shown in the Printed Records at p.p. 111–115.

This was offered in the trial Court by plaintiff in error as evidence to sustain its claim, and was excluded.

The Supreme Court of the State held the exclusion proper.

It is inconceivable that correspondence between officials could affect the property rights of litigants.

It is submitted that the appeal should be dismissed.

Respectfully,

N. W. NORTON,

Counsel for Defendants in Error.